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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GEORGE E. BARICH and
LAURIE ALDERMAN,

Plaintiffs,

vs.

CITY OF COTATI and
JOHN A. DELL'OSSO,

Defendants.

Case No.

COMPLAINT FOR

- VIOLATIONS OF CIVIL RIGHTS
- *MONELL* CLAIM
- VIOLATION OF AMERICANS WITH
DISABILITIES ACT

DEMAND FOR JURY TRIAL

Plaintiffs George E. Barich and Laurie Alderman, by and through their undersigned attorneys, hereby bring this action under 42 U.S.C. § 1983 and 42 U.S.C. § 12101 against Defendants the City of Cotati and John A. Dell'Osso to redress Plaintiffs' civil and legal rights, as follows:

PARTIES

1. Plaintiff George E. Barich ("Barich") is, and was at all times relevant, a resident of the City of Cotati, County of Sonoma, California.

2. Plaintiff Laurie Alderman ("Alderman") is, and was all times relevant, a resident of the City of Cotati, County of Sonoma, California.

1 this action pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has authority to award
2 Plaintiff Barich attorney fees under 42 U.S.C. § 12205.

3 8. Venue is proper in the Northern District of California under 28 U.S.C.
4 § 1391(b) and (c) in that Defendant City of Cotati is located within the district, and the
5 events giving rise to this claim occurred within the district.

7 NOTICE OF CLAIMS

8 9. Although not required as a prerequisite to a federal claim, before filing this
9 action, Barich timely filed three separate claims under the Government Tort Claims Act,
10 California Government Code § 810 et seq., with the City of Cotati, setting forth the facts
11 underlying Barich's claims.

12 10. Barich's claims related to three separate incidents that occurred at public
13 meetings of the Cotati City Council held on January 8, January 22, and March 27, 2019,
14 respectively.

15 11. Barich filed the above-referenced three claims with the City on April 16,
16 2019, within the six-month statute of limitations period. On June 3, 2019, the City's
17 insurance carrier served a Rejection of Claim as to all three claims by letter dated June 3,
18 2019. The letter states that the claims were "rejected by operation of law on June 3,
19 2019." Barich filed a second, supplemental claim relating to the March 27, 2019 incident,
20 specifically referencing the ADA, on July 31, 2019. On August 6, 2019, the City's insurer
21 sent another rejection letter to Barich, indicating that the claim presented on July 31, 2019
22 was rejected by operation of law on August 6, 2019.

23 12. In addition, on July 17, 2019, within the six-month statute of limitations
24 period, Barich filed an Americans with Disabilities Act Discrimination Complaint with
25 the U.S. Department of Justice, Civil Rights Division, Disability Rights Section,
26 regarding the incident of March 27, 2019. The Disability Rights Section elected not to
27 take any action on the complaint for lack of resources, on or about November 1, 2019.

13. Alderman's claims relate to two separate incidents that occurred at public meetings of the Cotati City Council held on January 8 and January 22, 2019, respectively, and her claims are filed within the applicable statute of limitations.

GENERAL ALLEGATIONS

14. The City of Cotati is the smallest incorporated municipality in the County of Sonoma. The city council meetings, as well as certain other meetings, are open to members of the public who may speak during a public comment period. Meetings may be observed by members of the public online, as well as in person. Members of the public who cannot attend city council meetings in person are routinely allowed to have representatives speak for them and to have their written statements read into the record during the public comment period.

15. Barich, a former city council member, is a frequent attendee and speaker at the council meetings. He often disagrees with policies advanced by the council and over the years has engaged in spirited debate with several council members; he has been called both a "gadfly" and a "watchdog" by the local press. Alderman is also a frequent attendee and speaker at the council meetings.

16. Barich suffers from progressive hearing loss along with Tinnitus (chronic ringing in the ears) for which there is no cure. Since about 2005, when city meetings and workshops were held in the newly built community room at the Cotati Police Department rather than the city council chambers next door, the City ignored Barich's complaints that he could not hear the discussion properly over the central air conditioning unit being employed during the meetings. For the last 10 years, he has often required the use of a city-provided electronic hearing-assist device at the council meetings in the city council chambers. The City is now using his disability to prevent his participation in city council proceedings in the community room, where the provided electronic hearing-assist devices do not work because of the lack of a public address system, thus denying him his right to

1 full participation in the city council's deliberations.

2 17. This is not the first time the City has violated Barich's civil rights during
3 and after city council meetings. In 2014, the City's Chief of Police threatened to arrest
4 Barich for exercising his First Amendment rights, leading to a similar federal civil rights
5 action against the City and Chief Parish, Barich v. Cotati and Michael Parish, Case No.
6 3:15-CV-00350 VC, which was settled in 2015 with the payment of \$50,000 by the City
7 to Barich. At that time, the Court, the Honorable Vince Chhabria presiding, said the Court
8 was shocked at the City's, and its counsel's, attitude toward the First Amendment. The
9 Court declined to order an injunction against the City but warned that further violation of
10 Barich's First Amendment rights would result in harsh consequences for the City.
11 Undeterred, however, the City has continued to violate Barich's rights, including his right
12 to Equal Protection.

13 18. In 2006, Barich had campaigned extensively against former Cotati Mayor
14 Lisa Moore's campaign for re-election as council member. She lost. In 2007, then-private
15 citizen John Moore, husband of Lisa Moore, while clearly intoxicated, approached Barich
16 in the audience at a regularly scheduled city council meeting. Moore said, "Barich, I'm
17 going run you out of town!" An argument ensued, and then-Mayor Pat Gilardi told them
18 both to "knock it off or take it outside."

19 19. In July of 2017, during a city council meeting, there was discussion of
20 additional cannabis industry business taxes in Cotati. During public comment, Barich
21 spoke against the tax. In an attempt to intimidate and harass Barich, then-council member
22 John Moore asked Barich, "Mr. Barich, are you still a grower?" The implication was
23 false. Barich had never been a "grower." Later in 2017, in an obvious attempt to chill
24 Barich's speech, council member John Moore called Barich a "money launderer" when
25 Barich tried to speak toward the end of the meeting, during the public comment period.
26 Again, the allegation was false. Barich had never been charged with, nor convicted of, the
27 crime of money laundering. That same John Moore was duly appointed Mayor of Cotati
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1 on December 8, 2020 and has replaced Dell'Osso.

2 20. On January 8, 2019, the City held a regularly-scheduled city council
3 meeting. The meeting was open to members of the public, including those who wished to
4 speak on various topics. Mayor Dell'Osso presided over the meeting.

5 21. Barich wished to be heard at the council meeting but was out of town on
6 that date. In his place, Barich appointed Alderman as his attorney-in-fact to present his
7 testimony to council members and members of the public during the public comment
8 period at the meeting. Alderman gave Dell'Osso a copy of the Power of Attorney
9 granting Alderman the authority to speak on Barich's behalf. Alderman reluctantly
10 provided Dell'Osso a copy of Barich's prepared statement upon his demand.

11 22. Although Dell'Osso accepted Barich's written statement for later inclusion
12 in the record, he refused to allow Alderman to speak on Barich's behalf and refused to
13 allow her to read his testimony into the record during the public comment period, thus
14 depriving Barich of his right to be heard by council members, and depriving Alderman of
15 her right to speak on Barich's behalf. Dell'Osso's actions also deprived members of the
16 public in attendance at the meeting, and members of the public watching and listening
17 online through the City's online live streaming of the city council meeting, the
18 opportunity to hear Barich's comments.

19 23. On January 22, 2019, the City held a regularly-scheduled city council
20 meeting. As with other regularly scheduled meetings, the meeting was open to members
21 of the public, including those who wished to speak on various topics. Dell'Osso presided
22 over the meeting.

23 24. As he had done for the January 8, 2019 meeting, Barich appointed
24 Alderman as his attorney-in-fact to present his testimony at the meeting. Alderman
25 presented a notarized copy of the Power of Attorney granting her the authority to speak
26 on Barich's behalf. She had a written statement of Barich, which she intended to read into
27 the record during the public comment period.

1 25. When Barich's name was called to testify and Alderman presented herself
2 to speak for Barich and to read his statement into the record, Dell'Osso asked the advice
3 of the City Attorney, who stated that the City's "rules" do not allow for speakers to
4 present a power of attorney and comment for someone else. However, to Plaintiffs'
5 knowledge there are no such rules. As he had done on January 8, Dell'Osso refused to
6 allow Alderman to speak on Barich's behalf or to read Barich's testimony into the record,
7 thus depriving Barich of his right to be heard at the meeting, depriving Alderman of her
8 right to speak on Barich's behalf at the meeting and, as with the earlier meeting,
9 depriving members of the public in attendance at the meeting, and members of the public
10 watching and listening online through the City's online live streaming of the city council
11 meeting, the opportunity to hear Barich's comments. Alderman argued with Mayor
12 Dell'Osso and the City Attorney that they were violating Barich's civil rights and that
13 they should seriously reconsider.

14 26. On March 27, 2019, Barich attended a special meeting of the city council
15 titled "Strategic Planning Meeting." The meeting had not been properly noticed as
16 required by law, and the special meeting's written material had not been made available
17 to Barich or other members of the public before the meeting, also as required by law. The
18 meeting had been scheduled for the community room at the Cotati police station rather
19 than the city council chambers next door.

20 27. A week before the special meeting, Barich had gone to the Cotati City
21 Clerk's office and requested that an electronic hearing-assist device be provided for his
22 use at the upcoming special meeting. The Cotati City Clerk had assured Barich that he
23 would be provided with a hearing-assist device at the time and place of the special
24 meeting.

25 28. Barich arrived a few minutes early to the special meeting on March 27,
26 2019, and the city clerk provided Barich with an electronic hearing-assist device.
27 However, the device did not function inside the community room at the police station.
28

1 The clerk then gave Barich a second unit, but it also failed to function.

2 29. Given that neither device was working, Barich asked the council for an
3 accommodation to address his disability. Despite this request for an accommodation,
4 Barich was relegated to the side of the room without the use of an electronic hearing-
5 assist device.

6 30. During the meeting, as the council tables were set up in a horseshoe pattern,
7 some members of the city council sat with their backs to the public, including Barich. By
8 placing Barich in the side of the room, with council members intentionally facing away
9 from him, the Mayor made it impossible for Barich to follow along and participate in the
10 discussion.

11 31. No public-address system was in use at the special meeting. Therefore,
12 Barich had considerable trouble hearing and understanding what was being said.

13 32. When afforded his three minutes to speak, Barich reminded the council of
14 his hearing disability, informed them that the council was not accommodating his
15 disability, and requested that the meeting be moved to the nearby council chambers where
16 his hearing disability could be accommodated through the use of the public-address
17 system. As an alternative, Barich requested that, if the special meeting was to be held in
18 the police station community room, that the meeting be rescheduled for another
19 time when the council could accommodate his disability with a working electronic
20 hearing-assist device.

21 33. Mayor Dell'Osso denied Barich's request for a reasonable accommodation,
22 suggesting that he raise his hand and interrupt the meeting every time he was having
23 trouble hearing the discussion. Barich replied to Dell'Osso that this was unreasonable.
24 Dell'Osso answered that Barich could either stay under the circumstances or leave.

25 34. Dell'Osso made no effort to call for a recess, contact the City Attorney
26 (who was not present for this meeting) for advice, or meet and confer with the City
27 Manager to address the issue of accommodating Barich's disability. Without being able to
28

1 hear the discussion, Barich could not meaningfully participate and left the meeting.

2 35. To be clear, Barich's claims are not based on the statements of Dell'Osso.
3 Rather, the statements are evidence of the First Amendment, Fourteenth Amendment and
4 ADA violations, which will continue unless enjoined by this Court.

5 36. Both before and after Dell'Osso refused to allow Alderman to speak on
6 behalf of Barich and to read his statement into the record, Dell'Osso and the City
7 regularly allowed other attendees to speak on behalf of individuals who were not present
8 at the meeting and to read their written statements into the record..
9

10 **CLAIM I**
11 **Violation of Equal Protection Clause**
12 **(Barich Against Defendant Dell'Osso)**

13 37. Paragraphs 1–36 are part of this claim.

14 38. Barich is a member in an identifiable class - individuals desiring to speak at
15 city council meetings but who are unable to attend and seek to have their statements read
16 into the record by a third party.

17 39. Dell'Osso regularly permitted other individuals, who are no different from
18 Barich and in fact are identical to him in terms of their desire to be heard whilst being
19 unable to attend the meeting. These individuals are identical to Barich in all relevant
20 aspects or directly comparable to him in all material aspects.

21 40. On the occasions identified above, on January 8, 2019 and January 22,
22 2019, Barich was intentionally treated differently from others similarly situated who were
23 permitted to have their statements read into the record by a third party at a city council
24 meeting while they themselves were not present at the meeting.

25 41. There is no rational basis for the difference in treatment between Barich and
26 the other similarly situated individuals, and Dell'Osso never identified any such basis.
27
28

CLAIM III
Violation of First Amendment Right to Freedom of Speech
(Alderman Against Defendant Dell’Osso)

49. Paragraphs 1–48 are part of this claim.

50. In doing the acts alleged herein on January 22, 2019, in refusing to allow Alderman to present Barich’s testimony as his legally authorized representative during the public comment period on matters of public interest at the council meeting, Dell’Osso, acting under the color of law and in violation of 42 U.S.C. § 1983, violated Alderman’s First Amendment right to freedom of speech by using his power to prevent Alderman from acting as Barich’s attorney in fact and from being heard on matters of public importance at a public forum based solely on the content, and the source, of the testimony she intended to present before the council.

51. Dell’Osso’s unlawful actions occurred as the result of an official policy or custom and were done willfully, knowingly, and with the specific intent to deprive Alderman of her constitutional rights under the First and Fourteenth Amendments to the U.S. Constitution, as well as under 42 U.S.C. § 1983. In doing the acts alleged herein, Dell’Osso acted with deliberate indifference to Alderman’s constitutional rights.

52. As a proximate result of these acts, Alderman has suffered damages, including but not limited to, physical, mental, and emotional injury and pain, mental anguish, suffering, humiliation, and embarrassment.

53. Alderman is entitled to all damages proximately caused by Dell’Osso’s wrongful conduct, including attorney fees.

CLAIM IV
Violation of Equal Protection Clause
(Alderman Against Defendant Dell’Osso)

54. Paragraphs 1–53 are part of this claim.

55. Alderman is a member in an identifiable class - individuals desiring to speak at city council meetings to orally present a written statement by someone who is

1 unable to attend and who has authorised another person to read his or her statement into
2 the record.

3 56. Dell'Osso regularly permitted other individuals, who are no different from
4 Alderman and in fact are identical to her in terms of their desire to present testimony of
5 someone unable to attend the meeting, to read a statement from an absent member of the
6 public. These individuals are identical to Alderman in all relevant aspects or directly
7 comparable to her in all material aspects.

8 57. On the occasions identified above, Alderman was intentionally treated
9 differently from others similarly situated who were permitted to read the statements of
10 another person into the record at the city council meetings.

11 58. There is no rational basis for the difference in treatment between Alderman
12 and the other similarly situated individuals, and Dell'Osso never identified any such
13 basis.

14 59. As a proximate result of these acts, Alderman has suffered damages,
15 including but not limited to, physical, mental, and emotional injury and pain, mental
16 anguish, suffering, humiliation, and embarrassment.

17 60. Alderman is entitled to all damages proximately caused by Dell'Osso's
18 wrongful conduct, including attorney fees.

19
20 **CLAIM V**
21 ***Monell Claim***
(Barich and Alderman Against Defendant City of Cotati)

22 61. Paragraphs 1–60 are part of this claim.

23 62. In doing the acts alleged above, Dell'Osso acted under color of state law.

24 63. The acts of Dell'Osso deprived Barich and Alderman of their particular
25 rights under the laws of the United States and the United States Constitution as alleged
26 herein.

1 64. Dell'Osso was a final policy maker and had final policymaking authority
2 from the City of Cotati concerning the wrongful acts alleged herein.

3 65. The wrongful acts of Dell'Osso were carried out under policies and
4 practices of the City that existed at the time of the conduct alleged, and were engaged in
5 with the full knowledge, consent, and cooperation and under the supervisory authority of
6 the City.

7 66. The City, by its policy-making agents, servants, and employees, authorized,
8 sanctioned and/or ratified Dell'Osso's wrongful acts; and/or failed to prevent or stop
9 those acts; and/or allowed or encouraged those acts to continue.

10 67. The acts complained of were carried out by Dell'Osso in his capacity as
11 Mayor under the customs, policies, usages, practices, procedures, and rules of the City.

12 68. The aforementioned customs, practices, procedures, and rules of the City
13 include, but are not limited to: (1) denying certain individuals their rights under the First
14 Amendment based on the content of their speech; and (2) refusing to accommodate
15 persons with disabilities.

16 69. The existence of these unlawful de facto policies and/or well-settled and
17 widespread customs and practices is known to, encouraged, and/or condoned by
18 supervisory and policy-making officials of the City.

19 70. The constitutional and statutory violations by the City, through the actions
20 of the Mayor, Dell'Osso, were proximately caused by the policies, practices, and/or
21 customs developed, implemented, enforced, encouraged, and sanctioned by defendant
22 City of Cotati, including the failure to: (1) adequately supervise and train its agents,
23 including Mayor Dell'Osso, thereby failing to adequately discourage constitutional
24 violations on the part of its agents; and (2) properly monitor and discipline its agents,
25 including Dell'Osso.

26 71. The City's unlawful actions were done willfully, knowingly, and with the
27 specific intent to deprive Barich and Alderman of their constitutional rights under the
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1 First and Fourteenth Amendments to the U.S. Constitution.

2 72. The City acted with deliberate indifference to Barich's and Alderman's
3 constitutional rights. As a proximate result of these acts, Barich's and Alderman's
4 constitutional rights have been violated, which caused them to suffer physical, mental,
5 and emotional injury and pain, mental anguish, suffering, humiliation, and
6 embarrassment.

7 73. Barich and Alderman have no adequate remedy at law and will suffer
8 serious irreparable harm to their constitutional rights unless the City is enjoined from
9 continuing the unlawful practices, policies, and/or customs that have proximately caused
10 these abuses to occur.

11
12 **CLAIM VI**
13 **Violation of Americans with Disabilities Act**
14 **(Barich Against Defendant City of Cotati)**

15 74. Paragraphs 1-73 are part of this claim.

16 75. The Americans with Disability Act of 1990, 42 U.S.C. § 12101, et seq.
17 ("ADA") sets forth certain requirements for the accommodation of persons with
18 disabilities by public and private entities. Title II of the ADA, 42 U.S.C. § 12132
19 prohibits discrimination on the basis of disability by public entities, such as the City of
20 Cotati, which is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1);
21 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131 et
22 seq., and its implementing regulations. A Title II entity is required by the statute to
23 accommodate persons with a hearing disability, including a partial hearing loss, i.e. being
24 hard of hearing.

25 76. Barich suffers from a partial hearing loss and therefore is a disabled person
26 entitled to protection under the ADA. Barich is a resident of the City of Cotati and is
27 entitled to participate in meetings of the city council at which comments by members of
28 the public are allowed to be presented.

1 77. As a person protected under Title II, Barich was entitled to various
2 accommodations when attending a public meeting, including but not limited to, being
3 provided with an electronic hearing-assist device that would enable him to clearly hear
4 the proceedings at the March 27, 2019 meeting of the city council. As alleged herein,
5 Barich was excluded from participation in the city council meeting by reason of his
6 disability.

7 78. Despite his requests, the City failed and refused to accommodate Barich.
8 The Mayor not only sat Barich in the side of the room, but some council members
9 participating in the meeting sat with their backs to him, thus preventing him from hearing
10 their comments. No public address system was in use, no working electronic hearing-
11 assist device was provided, and Barich was effectively excluded from participating in the
12 meeting.

13 79. In doing the acts alleged herein, the City willfully disregarded Barich's
14 disability, intentionally violating Title II of the ADA and purposely doing so to prevent
15 his participation in the city council meeting.

16 80. In doing the acts alleged herein, which occurred as the result of an official
17 policy or custom, the City acted with malice and reckless indifference to Barich's
18 constitutional rights. As a proximate result of these acts, Barich's constitutional rights
19 have been violated, which caused him to suffer physical, mental, and emotional injury
20 and pain, mental anguish, suffering, humiliation, and embarrassment.

21 81. Barich is entitled to all damages proximately caused by the City's wrongful
22 conduct, including attorney fees.

23
24 **PRAYER FOR RELIEF**

25 Plaintiffs George E. Barich and Laurie Alderman pray for relief as follows:

26 1. An injunction enjoining the City from engaging in conduct intended to
27 prevent Alderman from exercising her First Amendment rights to participate in the public
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proceedings of the City of Cotati City Council and to deny Barich and Alderman equal protection as described herein;

2. Affirmative relief in the form of accommodation for Barich's disability so that he may meaningfully participate in the proceedings of the City Council as described herein;

3. An award of compensatory damages;

4. An award of exemplary damages;

5. An award of attorney fees under 42 U.S.C. §§ 1988 and 12205;

6. An award of costs of suit under 42 U.S.C. §§ 1920, 1988 and 12205; and

7. For other such other and further relief as the Court deems appropriate and just.

Dated: January 4, 2021

Law Offices of Carleton L. Briggs

/s/ Carleton L. Briggs
CARLETON L. BRIGGS
Attorneys for Plaintiffs George E. Barich
and Laurie Alderman

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on each claim.

Dated: January 4, 2021

Law Offices of Carleton L. Briggs

/s/ Carleton L. Briggs
CARLETON L. BRIGGS
Attorneys for Plaintiffs George E. Barich
and Laurie Alderman